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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130702585-5454-02]

RIN 0648-BD42

Fisheries of the Northeastern United States; Special Management Zones for Delaware Artificial Reefs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to implement Special Management Zones for four Delaware artificial reefs under the black sea bass provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. These measures are necessary to promote orderly use of fisheries resources on artificial reefs by reducing user group conflicts, and are intended to maintain the intended socioeconomic benefits of the artificial reefs to the maximum extent practicable.

DATES: Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the Special Management Zones measures are available from Paul Perra, NOAA/NMFS, Sustainable Fisheries Division, 55 Great Republic Drive, Gloucester, MA 01930. The EA for the Special Management Zone measures is

also accessible via the Internet at: <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Greater Atlantic Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, (978) 281-9153.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council prepared the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan (FMP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing fisheries of the Northeastern U.S. also appear at 50 CFR part 648. Amendment 9 to the FMP which established conservation and management measures for the black sea bass fishery, also established a process by which the Council could recommend that Special Management Zones (SMZs) be established.

Special Management Zone Measures Background

In 2011, the Delaware Fish and Wildlife Department (DFW) requested and the Council recommended that five Delaware artificial reef sites be designated as SMZs according to the provisions of the FMP.

These artificial reefs are currently permitted by the U.S. Army Corps of Engineers (COE)

in the Exclusive Economic Zone (EEZ). The FMP provides authority to implement SMZs around artificial reefs. SMZ-designated areas are used to provide for specialized fishery management regulations around artificial reefs to reduce user conflicts, protect reef habitat, and control fishing off the artificial reefs.

The SMZ request noted that the DFW received complaints from hook-and-line anglers about fouling of their fishing gear in commercial pots and lines on ocean reef sites for more than 10 years. The request also noted that the U.S. Fish and Wildlife Service (FWS) Sportfish Restoration Program (SRP) had notified DFW that these gear conflicts are not consistent with the objectives of the SRP program, which provides funding for the building and maintenance of the artificial reefs. The FWS requires that state artificial reef programs be able to limit gear conflicts by state regulations in state waters or by SMZs for sites in the EEZ. The Council reviewed DFW's request through its specific process for recommending SMZ measures to NMFS for rule making. All meetings are open to the public and meeting related materials are publicly available. Extensive background on the SMZ management measures recommendation process is not repeated here but can be found in § 648.18 and in the proposed rule for these measures (79 FR 35141). After completing its initial review, the Council recommended to NMFS that all five Delaware artificial reefs be established as SMZs. The Council also recommended that the SMZ areas be enlarged beyond their original COE permit areas by 500 yards (0.46 km) to enhance enforcement. Additionally, the Council recommended that in the established areas of the SMZs, all vessels would only be allowed to conduct fishing with hook and line and spear (including the taking of fish by hand). NMFS subsequently reviewed the Council's recommendations through the development of an EA and published a proposed rule on June 19, 2014 (79 FR 35141) that

had an initial 45-day comment period. The comment period on the proposed rule was later extended (79 FR 41530) for an additional 15 days. See Comments and Responses section of this preamble for additional details.

NMFS proposed the Council's measures, applicable in the Federal waters of the EEZ and to all vessels as follows:

1. All five Delaware artificial reefs be established as SMZs;
2. The SMZ areas be enlarged beyond their original COE permit areas by 500 yards (0.46 km) for enforcement purposes; and
3. Within the established areas of the SMZs, all vessels would only be allowed to conduct fishing with hook and line and spear (including taking of fish by hand).

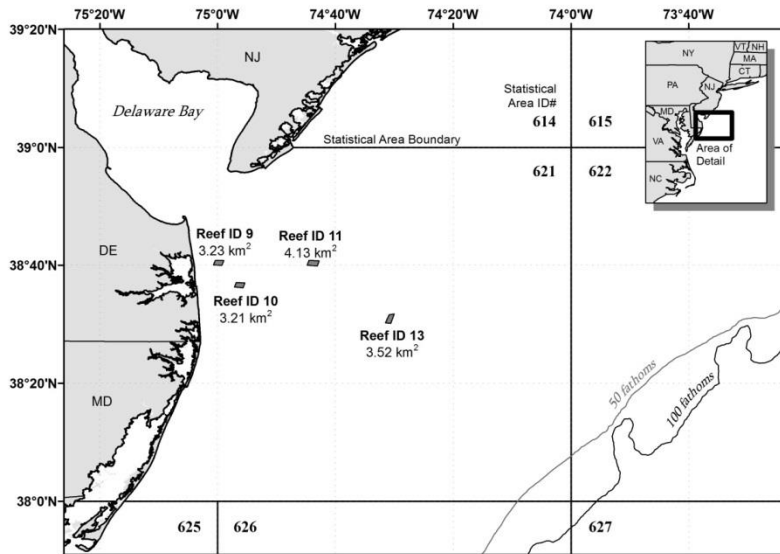
The New England Fishery Management Council and commercial fishermen commented on the proposed rule that implementing an SMZ at the most offshore artificial reef site (site 14) could have serious negative effects on the scallop fishery in that it would restrict scallop dredging in a highly productive scallop fishing area. Also, the DFW requested that the 0.46-km area enlargement for enforcement not be implemented because doing so would enlarge (approximately double) the size of the SMZs to cover other structures not intended to be part of the artificial reefs. DFW also stated that SMZ area enlargements for enforcement would negatively impact more commercial fishing activities and were not necessary to enforce the SMZs. In response to concerns from the scallop fleet, and because no artificial reef materials have yet been placed at site 14, DFW withdrew its request for an SMZ at that site. Also, at its August meeting (during the comment period for the proposed rule) the Mid-Atlantic Council reconsidered its recommendations for the SMZs and withdrew its requests for an SMZ at site 14

and for each SMZ to be enlarged 0.46 km for enforcement purposes. The Atlantic States Marine Fisheries Commission also supported the Mid-Atlantic Council and DFW's requested changes to the proposed rule.

Changes From the Proposed Rule

NMFS has made two changes from the proposed rule: (1) SMZ site 14 is not being implemented and (2) the proposed 0.46-km enlargement to enhance enforcement on the four remaining SMZs is not being implemented as had been proposed. These changes are being made as a result of the comments received on the June 19, 2014, proposed rule (79 FR 35141). The final boundaries for the SMZs are in Federal waters and shown in Figure 1.

Figure 1. Location of Four Delaware Artificial Reef SMZ Sites in the EEZ.



The SMZ sites are bounded by the following coordinates specified as follows:

Reef Site 9

CORNER	N. LATITUDE	W. LONGITUDE
9SE	38° 39.972'	74° 59.298'
9SW	38° 40.05'	75° 0.702'
9NW	38° 40.848'	75° 0.402'
9NE	38° 40.8'	74° 58.902'
9SE	38° 39.972'	74° 59.298'

Reef Site 10

CORNER	N. LATITUDE	W. LONGITUDE
10SE	38° 36.198'	74° 55.674'
10SW	38° 36.294'	74° 57.15'
10NW	38° 37.098'	74° 56.802'
10NE	38° 37.002'	74° 55.374'
10SE	38° 36.198'	74° 55.674'

Reef Site 11

CORNER	N. LATITUDE	W. LONGITUDE
11SE	38° 39.882'	74° 43.05'
11SW	38° 40.002'	74° 44.802'
11NW	38° 40.848'	74° 44.502'
11NE	38° 40.752'	74° 42.75'
11SE	38° 39.882'	74° 43.05'

Reef Site 13

CORNER	N. LATITUDE	W. LONGITUDE
13SE	38° 30.138'	74° 30.582'
13SW	38° 30.222'	74° 31.5'
13NW	38° 31.614'	74° 30.864'
13NE	38° 31.734'	74° 30.018'
13SE	38° 30.138'	74° 30.582'

Comments and Responses

On June 19, 2014 (79 FR 35141), NMFS published proposed SMZ measures for a 45-day

public notice and comment, and then extended the public comment period for 15 additional days on July 16, 2014 (79 FR 41530). NMFS received 16 categories of comments from 12 individuals and/or associations during the comment period on the proposed rule. The comments were from: Four individuals; two industry groups (the Recreational Fisheries Alliance and the Fisheries Survival Found); the Mid-Atlantic Council; the New England Council; the Commission, the State of Delaware Coastal Programs and Department of Natural Resources; and the New Jersey Department of Fish and Wildlife. Two commenters supported implementing measures as proposed and two commenters objected to any implementation of the proposed measures. The majority of comments including the State of Delaware and the Mid-Atlantic Council (the initial requesters of the SMZs) supported the measures being implemented in this final rule.

Comment 1: The Mid-Atlantic Council, the Commission, the State of Delaware Department of Natural Resources, the New England Council, and the Fisheries Survival Fund, requested that NMFS not implement an SMZ at artificial reef site 14. The site does not currently have any artificial reef structure on the bottom. Commenters stated that restricting fishing gear there may have negative impacts on fisheries that use mobile gear, especially the scallop fishery.

Response: NMFS agrees and is not implementing an SMZ at reef site 14 at this time. Because there is currently no artificial reef structure at site 14, and because multiple groups have requested site 14 be withdrawn from the SMZ final measures, NMFS sees no need for designating an SMZ at site 14.

Comment 2: The Mid-Atlantic Council, the Commission, the State of Delaware Department of Natural Resources, Delaware Coastal Programs, and a member of the public

requested that NMFS not implement the 0.46-km buffer (enforcement area) around the artificial reefs permit boundaries. Commenters stated this would approximately double the size of the SMZs to cover other structures not intended to be part of the artificial reefs and negatively impact more commercial fishing activities.

Response: NMFS agrees, and is not implementing the 0.46-km enlarged enforcement area in this final rule. If enforcement issues arise over the ability to determine if vessels are fishing in or outside the SMZs, NMFS may need to revisit implementing a larger SMZ area around the artificial reefs.

Comment 3: The New Jersey Department of Fish and Wildlife commented it was not in favor of the 0.46-km enlarged enforcement area around the artificial reefs COE permit boundaries, stating it was too excessive. Their comment suggested that a 250-yard (0.23-km) enlarged enforcement area be used instead.

Response: As noted in response to comment 2, NMFS has determined that the enlarged enforcement area is not necessary and therefore the final rule implements no enforcement buffer around the SMZs.

Comment 4: Five commenters (including the Recreational Fisheries Alliance) supported implementation of the SMZs to eliminate gear conflicts and provide recreational fisheries access to the artificial reefs. Two commenters were in support of implementing SMZs at all five artificial reef sites and three commenters supported implementing SMZs at all sites except for artificial reef site 14.

Response: NMFS agrees. The SMZs are intended to reduce the commercial/recreational gear conflicts on the artificial reefs, and help ensure unimpeded access to the artificial reefs for

recreational and commercial hook and line fishing. However, for reasons stated above, NMFS is implementing SMZs at all proposed artificial reef sites except site 14.

Comment 5: One commenter contended that the proposed action was not consistent with § 648.148, stating that the Code of Federal Regulations (CFR) says the SMZ would prohibit or restrain specific types of gear types, without identification of the specific gear types noted in the proposed rule.

Response: NMFS disagrees; § 648.148 states that the recipient of a COE permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the Council as an SMZ. The SMZ will prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the permitted area. This action would restrict use of all commercial gears other than hook and line (or taking of fish by hand), which is allowable under § 648.148. This is compatible with the intent of the Delaware artificial reefs which were built with Sportfish Restoration Program (SRP) Funds.

Comment 6: One commenter stated the proposed rule did not make clear the intent of the Delaware artificial reef program and what fishing gears should be incompatible with that program. The commenter contended that the intent of the reefs is listed under 33 U.S.C. 2101(a)(5). They further stated that prohibiting gear types on the reef is a major change of the original intent the reefs were permitted under, and the public should be granted another comment period.

Response: NMFS disagrees. The reefs were built with SRP funding to enhance recreational fishing. COE regulations at 33 U.S.C. 2101(a)(5) are designed to permit artificial

reefs for the benefit of commercial and recreational fishing. All reefs need not be built to simultaneously benefit commercial and recreational fishing. However, in this case, the SMZs would benefit recreational fishing, and hook and line commercial fishing. NMFS provided ample opportunity for public comment, extending the comment period from 45 to 60 days. In addition, the SMZs were discussed at multiple Council and Commission meetings. An additional comment period on the intent of the reef program or the SMZ measures is not needed. However, when the Delaware artificial reef program COE permit for the artificial reefs is renewed or if there are further regulatory actions for the SMZs, the public will have further opportunity to comment on the SMZs, reefs and their intent, or both.

Comment 7: One commenter stated that the Council's monitoring committee failed to consider all applicable law as required by § 648.146(a)(4) and did not mention the National Fisheries Enhancement Act of 1984 (NFEA).

Response: The monitoring committee was aware of the NFEA, but saw no issues to report on or mention in its report. NMFS considered the NFEA in the development of the EA and the proposed rule for the SMZs, and concluded that implementing the SMZ's did not conflict with the NFEA.

Comment 8: One Commenter stated that the SMZs will be in violation of the NFEA under 33 U.S.C. 2101(a)(5) because it will not increase fishing opportunities for commercial fishermen, will not allow increased production of fisheries products (conchs, lobsters), and will not increase fuel efficiency of commercial fishermen.

Response: NMFS disagrees. All reefs need not be built to simultaneously benefit commercial and recreational fishing. Under the NFEA, it states that properly designed,

constructed, and located artificial reefs can enhance the habitat and diversity of fishery resources; enhance United States recreational and commercial fishing opportunities; increase the production of fishery products in the United States; increase the energy efficiency of recreational and commercial fisheries; and contribute to the United States and coastal economies. Implementing SMZs for the Delaware artificial reefs will increase recreational and commercial hook and line fisheries opportunities, and likely increase energy efficiency of the recreational fleet (by reducing their search time for high quality fishing areas) and contribute to the United States and coastal economies. The Delaware reefs were built with SRP funds to specifically enhance recreational fisheries.

Comment 9: One commenter stated that the SMZ will be in violation of the NFEA because it says artificial reefs shall be managed in a manner which will facilitate access and utilization by commercial fishermen. The stated SMZ measures inhibit rather than facilitate commercial fishing.

Response: NMFS disagrees. The SMZ measures are not in violation of the NFEA which provides guidance that permit artificial reefs to be built for the benefit of commercial and recreational fishing. Under the NFEA, all reefs need not be built to simultaneously benefit commercial and recreational fishing. However, the SMZs implemented under this rule will enhance commercial hook and line fishing on the artificial reefs.

Comment 10: One commenter stated that the catch record for Delaware's 27 licensed commercial hook and line fishermen shows they do not utilize these artificial reefs. Therefore, to allow hook and line only is not viable and a violation of 33 U.S.C. 2102(2).

Response: NMFS disagrees. The NFEA set standards for artificial reefs that they be based on the best scientific information available, be sited and constructed, and subsequently monitored and managed in a manner which will:

- (1) Enhance fishery resources to the maximum extent practicable;
- (2) Facilitate access and utilization by United States recreational and commercial fishermen;
- (3) Minimize conflicts among competing uses of waters covered under this chapter and the resources in such waters;
- (4) Minimize environmental risks and risks to personal health and property; and
- (5) Be consistent with generally accepted principles of international law and shall not create any unreasonable obstruction to navigation.

Under the NFEA, all artificial reefs need not be built to simultaneously benefit commercial and recreational fishing. In the case of the Delaware artificial reefs, there is a need to minimize recreational and commercial fishing conflicts and ensure the recreational fleet access to the reefs that were built with SRP funding. Some of the commercial gears deployed on the artificial reefs (fish pots and buoys) may currently be physically inhibiting the use of commercial hook and line fishing on the reefs. Delaware's hook and line commercial fishermen may not currently be fishing the artificial reefs, but they will have the option to fish the reefs without conflict with stationary commercial gears once the SMZs are implemented.

Comment 11: One commenter stated that the word "among" is used in the NFEA when saying artificial reefs shall be utilized in a manner which will minimize conflicts among

competing users, 33 U.S.C. 2101(3). The commenter contended that the SMZ measures limits use to two groups (hook and line and spear) and therefore violates the NFEA.

Response: NMFS disagrees; the SMZ's will allow continued use among all to fish the artificial reefs. They will just be limited in the type of gear they can use. Anyone with proper commercial fishing permits may continue to fish on the artificial reefs using hook and line or taking by hand, and private, charter, and party recreational vessels may continue to fish the artificial reefs with hook and line gear.

Comment 12: One commenter stated that the SMZs would violate the NFEA, which states that reefs shall be managed in a manner which will minimize conflicts among competing users. The commenter contended that by eliminating the use of commercial gear types (pots) and allowing only angling and spear, there are no competing uses of the reefs.

Response: NMFS disagrees. Under the NFEA, all artificial reefs need not be built to simultaneously benefit commercial and recreational fishing. In the case of the Delaware artificial reefs, there is a need to minimize recreational and commercial fishing conflicts, and ensure the recreational fleet access to the reefs that have been built with SRP funding. Also, under the SMZ measures commercial hook and line fishermen may choose to compete for use of the artificial reefs.

Comment 13: One commenter stated that FWS threatening to withdraw funding unless reef access/usage rules are put in place is akin to bribery. The commenter suggested that the Federal prosecutor should be called to investigate. The commenter also stated the New Jersey Department of Environmental Protection (NJDEP) was put in a similar situation by FWS where SRP funds could be withdrawn, and in that case New Jersey elected not to enact SMZs.

Response: The FWS does provide SRP funding to DFW to support its artificial reef program. The SRP is supported by the Dingell-Johnson Sport Fish Restoration Act, which uses funds provided by excise taxes on sport fishing equipment and motorboat fuels. NMFS understands from the FWS that only projects that benefit recreationally important finfish species are eligible for SRP funding. The development and maintenance of artificial reefs in marine waters is just one type of project supported by SRP. These funds are also used for research and survey work, boat ramp construction, aquatic resources education programs, fish hatcheries, aquatic habitat improvement, land acquisition for recreational fishing access, and many other types of projects. The role of the FWS is to distribute these funds and make sure they are spent according to the law and regulations under (50 CFR part 80). While NMFS understands the NJDEP can no longer use SRP funding for its artificial reef program, it still receives its full SRP allocation for other appropriate SRP eligible projects.

SRP funds are apportioned to states based on their relative number of licensed anglers and land and water area. Delaware and New Jersey are both minimum apportionment states, so they each receive one percent of funds available each year. This was \$3.2 million in fiscal year 2014. Like all other states, Delaware and New Jersey decide how to spend their SRP funds. Delaware requested and received \$595,500 of Federal funds for artificial reef work for 2014. If SMZs are not designated on artificial reefs off Delaware, then the FWS may withhold future SRP funds from the DFW artificial reef program. Thus, SRP funds would not be allowed to be used on the reefs due to the continuing conflicts with commercial fishermen. This is in accordance with SRP regulations (50 CFR part 80). If that were to happen, then Delaware will likely be reminded by FWS to spend its SRP funds on other eligible projects.

Comment 14: One commenter was against building artificial reefs. The commenter stated artificial reefs are created for use as cheap dumping grounds and are making our oceans garbage dumps. The commenter also stated artificial reefs are a deterrent to a healthy ocean.

Response: NMFS considers that the Delaware Artificial Reef Program is being conducted responsibly and successfully with extensive regulatory oversight. State artificial reef programs and their permitting, such as the Delaware Artificial Reef Program, are among the most heavily regulated activities conducted in our bays and coastal oceans. NMFS took the lead in 1984, by writing the National Artificial Reef Plan (subsequently updated by the joint Commission/Gulf States Marine Fisheries Commission artificial reef committees in 2007). This framework described the characteristics of acceptable reef material. Materials of opportunity must be durable, stable, and non-toxic. These guidelines have led to the banning of some materials used in the 1970's such as unballasted tires, and wooden or fiberglass vessels, resulting in ecologically sound artificial reefs since the mid-1980s. All Atlantic coast states with artificial reef programs have written state artificial reef plans, modeled after the National Artificial Reef Plan. State reef coordinators are members of the Commission's Artificial Reef Committee and meet periodically to learn from one another's experience resulting in less trial and error in selecting materials and building reefs. All state reef programs are permitted through state agencies dealing with sub-aqueous lands, historical and cultural affairs or coastal management and through the COE on the Federal level. Materials are approved or banned by the COE during the permitting process. NMFS, FWS, and the Environmental Protection Agency (EPA) have input through the COE into this process. When a new, unanticipated material becomes available for reefing, input is sought from EPA and other agencies and the material may then be listed as

acceptable for reef building in the COE permit. In Delaware, the following agencies have had input on the Delaware Reef Program state and Federal permits and have been satisfied with the activities and materials used: Delaware Division of Historical and Cultural Affairs; Delaware Division of Water Resources Wetlands Section; Delaware Coastal Management Program; COE; FWS; NMFS; and EPA.

Regarding vessels that are used in artificial reef building, Delaware has worked closely with EPA to eliminate toxins. Delaware routinely exceeds the best management practices for reefing of vessels, developed by the Commission's Artificial Reef Committee. Delaware artificial reefs comply with the provisions of the Toxic Substances Control Act.

NMFS assures artificial reefs are not "a deterrent to a healthy ocean." Artificial reefs provide a unique community which is especially rare in the Mid-Atlantic region. Monitoring has shown an increase in available food for fish per square foot on the Delaware artificial reefs. The artificial reefs can increase fishing opportunities and provide economic benefits to coastal communities.

Comment 15: One commenter requested that NMFS exempt mobile bottom-tending gears from any restriction in the site 14 SMZ. The commenter correctly stated there is currently no artificial reef in Area 14. The commenter further stated that implementing an SMZ at this time that would restrict mobile gear would create adverse impacts on the scallop fishery with no associated benefits.

Response: NMFS agrees. The final rule does not implement an SMZ at Site 14 (see response to comment 1). Both Delaware and the Mid-Atlantic Council have withdrawn their requests for SMZ status for site 14.

Comment 16: One commenter stated that NMFS is trying to hide the publication of the SMZ proposed rule from the public, by not putting a notice of its publication on its website.

Response: NMFS gave appropriate time and notice for the public to comment. NMFS published the SMZ proposed rule in the **Federal Register** (79 FR 35141) on June 19, 2014, with a comment period to August 4, 2014; posted a story about the proposed rule on its Greater Atlantic Region (GARFO) webpage on June 24, 2014; and on July 16, 2014, extended the comment period an additional 15 days to August 19, 2014 (79 FR 41530). The rule was available on the Federal government's e-rulemaking portal, *regulations.gov*. Links to the rule and associated EA were on the GARFO website, <http://www.greateratlantic.fisheries.noaa.gov/>.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

Introduction

The Regulatory Flexibility Act (RFA) requires that Federal agencies analyze the expected impacts of a rule on small business entities, including consideration of disproportionate and/or significant adverse economic impacts on small entities that are directly regulated by the action. As part of the analysis, Federal agencies must also consider alternatives that minimize impacts

on small entities while still accomplishing the objectives of the rule. The required analysis is used to inform the agency, as well as the public, of the expected impacts of the various alternatives included in the rule, and to ensure the agency considers other alternatives that minimize the expected impacts while still meeting the goals and objectives of the action, and that are still consistent with applicable law. Section 604 of the RFA, 5 U.S.C. 604, requires Federal agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for each final rule.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

Major issues on the proposed action were raised in five ways:

1. The New England Council and the commercial industry was concerned that implementing an SMZ at the most offshore artificial reef site would have serious negative effects on the scallop fishery.
2. The DFW requested that the 500-yard (0.46 km) buffer areas area (enlargements for enforcement) not be implemented because they would approximately double the size of the SMZs to cover other structures not intended to be part of the artificial reefs;
3. The DFW also stated that the SMZ 0.46-km area enlargements would negatively impact more commercial fishing activities and were not necessary to enforce the SMZs.
4. In response to concerns from the scallop fleet, and because no artificial reef materials have yet been place at site 14, DFW withdrew its request for an SMZ at that site.
5. At its 2014 August meeting, which was during the comment period for the proposed rule, the Mid-Atlantic Council reconsidered its recommendations for the SMZs and

withdrew its requests for an SMZ at site 14 and for each SMZ to be enlarged by 0.46 km for enforcement purposes.

Based on the comments received on the proposed rule and the Mid-Atlantic Council's revised recommendations, site 14 has been dropped from SMZ implementation, and each of the remaining four artificial reef SMZ are not extended by 0.46 km (see comment 2 in

COMMENTS AND RESPONSES for this rule for more information). The SMZs are implemented to have the same size and retain the same boundaries as prescribed on their respective artificial reef site COE permit.

These changes from the proposed rule to the final rule will reduce impacts on the scallop fishery because site 14 is dropped providing them access to that area and removing the extended 0.46- km enforcement area from the remaining four artificial reefs SMZs will provide more ability to all commercial vessels to fish nearer the artificial reefs than was proposed.

Description of an Estimate of the Number of Small Entities to Which the Rule Would Apply

The Small Business Administration (SBA) updated its standards (effective July 14, 2014 (79 FR 33647; June 12, 2014)) to increase what defines a small fishing business, based on gross revenues as: A finfish business of up to \$20.5 million, a commercial shellfishing business of up to \$5.5 million, and a for-hire recreational fishing businesses of up to \$7.5 million. Pursuant to the RFA, and prior to SBA's June 12 interim final rule, an initial regulatory flexibility analysis was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under either the former, lower size standards, or newer higher standards, all entities considered as possibly subject to this action are considered small entities (excepting one large entity that operated at site 14, but site 14

has been dropped from this action). Thus all entities affected by the final rule are considered small under the new standards. NMFS has determined that the new size standards do not affect analyses prepared for this action. All affected entities would still be considered small under the new or old standard. In January 2015, because of the changes from the proposed rule to the final rule regarding site 14, the size of the SMZs, and the new SBA standards, NMFS updated its original IRFA analysis. The January 2015 IRFA conforms to the updated standards, does not include site 14, and applies to the smaller size SMZs created under this final rule.

This rule applies to all Federal permit holders except recreational for-hire permit holders. Thus, the affected business entities of concern are businesses that hold commercial Federal fishing permits with the exception of those that fish with hook and line. While all business entities that hold commercial Federal fishing permits could be directly affected by these regulations, not all business entities that hold Federal fishing permits fish in the areas identified as potential SMZs. Those who actively participate, i.e., land fish, in the areas identified as potential SMZs would be the group of business entities that are directly impacted by the regulations.

The number of possible affected entities (those with a fishing history in the SMZs) are described in Table 1, through an enumeration of the number of commercial fishing vessels with recent activity within the four reef sites (sites 9, 10, 11, and 13), by gear type.

Table 1. Number of Unique Vessels with Landings within the Coordinates of the Four Reef Sites (sites 9, 10, 11, and 13) by Gear Type, and their Percent of Total Annual Ex-vessel Revenue Landed at the Reef Sites

	Gear Type			Percent of Total Annual Revenue			
	Pot/Trap	Dredge	Trawl	<5%	5-9%	10-19%	20-29%
2008	1	0	0	1	0	0	0
2009	2	0	0	1	1	0	0

2010	0	0	1	1	0	0	0
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During 2008, 2009, and 2010, four vessels reported landings from within the artificial reef sites (Table 1). Because of the uncertainty of reporting vessel areas fished with VTRs, impacts for vessels fishing within the artificial reef areas and beyond to 0.46 km were also considered. Only two commercial vessels reported landings within 0.46 km of the reef sites in each of these years, one vessel reported landings in two of the three years, and 12 vessels reported landings in only one of the three years. This implies a total of eight unique vessels, excluding site 14, which is not included, reported landings within the artificial reef sites during the full 3-year period.

Total revenue earned by these business was derived from both shellfishing and finfishing, but the highest percentage of average annual revenue for the majority of the businesses was from shellfishing. Of the 14 unique fishing business entities potentially estimated to be affected because of reporting VTRs within 0.46 km of the artificial reefs around the 4 reef sites, 8 entities earned the majority of their total revenues (i.e., from all species and areas fished) from landings of shellfish, and 6 entities earned the majority of the their total revenues from landings of finfish. Thus, eight of the potentially affected businesses are classified as shellfishing business entities and six as finfishing business entities.

Average annual gross revenue estimates calculated from the most recent 3 years of available Northeast region dealer data (2010-2012) indicate that under the preferred alternative, 14 of the 14 potentially affected business entities are considered small (8 shellfish and 6 finfish).

Under the preferred alternative, only three vessels show VTR operations within the artificial reef areas with no vessels obtaining more than 9 percent of its revenue from fishing within the artificial reef boundaries (Table 1).

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

Site 14 has been dropped from SMZ implementation, and each of the remaining four artificial reefs SMZ are implemented without the additional enforcement buffer. The SMZs are implemented to have the same size and retain the same boundaries as prescribed on their respective artificial reef site COE permit. These changes from the proposed rule minimizes impacts on the commercial vessels (small entities) that fish near the artificial reefs by allowing them to retain as much of their traditional fishing grounds as possible.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, we will send a small entity compliance guide to all Federal permit holders affected by this action. In addition, copies of this final rule and guide (i.e.,

information bulletin) are available from NMFS online at

<http://www.greateratlantic.fisheries.noaa.gov/>.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 1, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (p)(1)(vi) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(p) * * *

(1) * * *

(vi) *Special management zone.* Fail to comply with any of the restrictions for special management zones specified in § 648.148(b).

* * * * *

3. Revise § 648.148 to read as follows:

§ 648.148 Special management zones.

(a) *General.* The recipient of a U.S. Army Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the MAFMC as a special management zone (SMZ). The MAFMC may prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification within the SMZ. The establishment of an SMZ will be effected by a regulatory amendment, pursuant to the following procedure: An SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Greater Atlantic Regional Fisheries Office, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report.

(1) *Evaluation criteria.* In establishing an SMZ, the SMZ monitoring team will consider the following criteria:

(i) Fairness and equity;

(ii) Promotion of conservation;

(iii) Avoidance of excessive shares;

(iv) Consistency with the objectives of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law;

(v) The natural bottom in and surrounding potential SMZs; and

(vi) Impacts on historical uses.

(2) The MAFMC Chairman may schedule meetings of MAFMC's industry advisors and/or the SSC to review the report and associated documents and to advise the MAFMC. The MAFMC Chairman may also schedule public hearings.

(3) The MAFMC, following review of the SMZ monitoring team's report, supporting data, public comments, and other relevant information, may recommend to the Regional Administrator that an SMZ be approved. Such a recommendation will be accompanied by all relevant background information.

(4) The Regional Administrator will review the MAFMC's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in the **Federal Register** in accordance with the recommendations. If the Regional Administrator rejects the MAFMC's recommendation, he or she shall advise the MAFMC in writing of the basis for the rejection.

(5) The proposed rule to establish an SMZ shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the record and consistent with the Magnuson-Stevens Act and other applicable law.

(b) *Approved/Established SMZs--Delaware Special Management Zone Areas.* Special management zones are established for Delaware artificial reef permit areas # 9, 10, 11, and 13, in the area of the U.S. Exclusive Economic Zone. From January 1 through December 31 of each

year, no fishing vessel or person on a fishing vessel may fish in the Delaware Special Management Zones with any gear except hook and line and spear fishing (including the taking of fish by hand). The Delaware Special Management Zones are defined by straight lines connecting the following point's N. latitude and W. longitude in the order stated:

(1) Delaware artificial reef # 9.

POINT	CORNER	N. LATITUDE	W. LONGITUDE
1	9SE	38° 39.972'	74° 59.298'
2	9SW	38° 40.05'	75° 0.702'
3	9NW	38° 40.848'	75° 0.402'
4	9NE	38° 40.8'	74° 58.902'
5	9SE	38° 39.972'	74° 59.298'

(2) Delaware artificial reef # 10.

POINT	CORNER	N. LATITUDE	W. LONGITUDE
1	10SE	38° 36.198'	74° 55.674'
2	10SW	38° 36.294'	74° 57.15'
3	10NW	38° 37.098'	74° 56.802'
4	10NE	38° 37.002'	74° 55.374'
5	10SE	38° 36.198'	74° 55.674'

(3) Delaware artificial reef # 11.

POINT	CORNER	N. LATITUDE	W. LONGITUDE
1	11SE	38° 39.882'	74° 43.05'
2	11SW	38° 40.002'	74° 44.802'
3	11NW	38° 40.848'	74° 44.502'
4	11NE	38° 40.752'	74° 42.75'
5	11SE	38° 39.882'	74° 43.05'

(4) Delaware artificial reef # 13.

POINT	CORNER	N. LATITUDE	W. LONGITUDE
1	13SE	38° 30.138'	74° 30.582'
2	13SW	38° 30.222'	74° 31.5'
3	13NW	38° 31.614'	74° 30.864'
4	13NE	38° 31.734'	74° 30.018'
5	13SE	38° 30.138'	74° 30.582'

